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Honorable Mayor and City Council of the City of Long Beach
c/o Ms. Amy L. Harbin, AICP, Planner
City of Long Beach
Development Services Department
411 West Ocean Boulevard, 3rd Floor
Long Beach, CA 90802
Email: amy.harbin@longbeach.gov

Re: Applicant's Response to Appeals of Long Beach Cruise Terminal Improvement Project; Site Plan Review 18-032 and Mitigated Negative Declaration 08-19

Honorable Mayor and City Council:

We are counsel for Carnival Corporation & PLC ("Carnival"), the applicant for the Long Beach Cruise Terminal Improvement Project ("Project"). The Project was approved by the Long Beach City Planning Commission ("CPC") on November 7, 2019, which included a Site Plan Review approval and the adoption of a Mitigated Negative Declaration ("MND") under the California Environmental Quality Act ("CEQA"). This letter responds to the five separate administrative appeals ("Appeals") of the Project's approvals submitted by:

- (1) Ann Cantrell and Anna Christensen of the Sierra Club Los Cerritos Wetlands Task Force ("WTF");
- (2) Jerilyn Lopez Mendoza of the Coalition for Clean Air ("CCA");
- (3) Jesse N. Marquez for Coalition for a Safe Environment ("CFASE");
- (4) Ann Cantrell, Joe Weinstein, and Corliss Lee for Citizens for Responsible Planning ("CARP"); and
- (5) Andrea Hricko for Concerned Faculty of USC and UCLA ("CFU") (collectively "Appellants").

The Appeals are exclusively focused on the City of Long Beach's ("City") adoption of the MND.

Because the Appeals are often duplicative in terms of the issues they raise, this response addresses multiple appeals within topical responses before addressing unique claims in certain Appeals.

I. Applicable Law Under CEQA

Before we address the lack of merit in each of the Appeals, the legal standards applicable to the Appeals' claims that the MND was improperly adopted by the City must be reviewed. Under CEQA¹ Section 21064.5, the "fair argument" standard applies to a city's decision to adopt an MND. Under this standard, a lead agency must not adopt an MND "whenever substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment." (*Laurel Heights Improvement Assn.*

¹ All statutory references to "CEQA" are to the California Public Resources Code.



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v. Regents of University of California (1993) 6 Cal.4th 1112, 1123.) “[F]acts, reasonable assumptions predicated upon facts, and expert opinion supported by facts” can all constitute “[s]ubstantial evidence” of a significant effect on the environment, and “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible” do not. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 777 (“*Parker Shattuck*”), citing CEQA Guidelines, § 15064, subd. (f)(5).)

As stated in *Parker Shattuck*, the City’s adoption of an MND will be upheld if there is no “substantial evidence in light of the whole record before the ... [City] that the [Project] ... may have a significant effect on the environment.” (222 Cal.App.4th 768, 778.)

Appellants have the burden of proof of establishing any claims of a violation of this standard, and must carry that burden by citing to substantial evidence in the administrative record before the agency supporting a fair argument that the project at issue may have a significant unmitigated environmental effect. (*Id.*, *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 434.) “Unless the administrative record contains this evidence, and [plaintiffs] cite[] to it, no ‘fair argument’ that an EIR is necessary can be made.” (*Parker Shattuck*, 222 Cal.App.4th 768, 778.)

Thus, an appellant cannot carry its burden merely by asserting, in broad terms, that the MND or any other documents in the record contain evidence of a project’s potential significant effects. Rather, an appellant must instead identify “the material evidence” on which its arguments rely, and, should it fail to do so, its arguments are “deemed to be waived.” (*Perley*, 137 Cal.App.3d at 434 [MND upheld for conditional use permit and reclamation plan].)

Determining whether “evidence is ‘substantial’ is in itself a weighing process”: a decisionmaker “does not look only to the evidence relied upon by [an appellant] to the exclusion of all contrary evidence. Evidence that rebuts, contradicts or diminishes the reliability or credibility of [appellants’] evidence is properly considered.” (*Citizens’ Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1168 [college building project MND upheld].) Further, a reviewing court will give the lead agency “the benefit of [the] doubt on any legitimate, disputed issues of credibility.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617 [MND for use permit upheld].)

As a general matter, as will be explained further below, the written justifications provided in the Appeals do not cite any evidence, but rather merely assert bald legal conclusions alleging the Project would cause significant impacts contrary to the well-supported conclusions of the MND. The alleged impacts themselves are insufficiently identified, and supporting evidence in the record is neither cited by nor provided with any of the Appeals. For this reason and all the reasons stated below, the Appellants fail to carry their burden establishing any error on the part of the City in adopting the MND. The Appeals should be denied.

The Project here is of limited scope and duration. It consists of only maritime improvements that call for limited dredging, the construction of mooring dolphins and catwalks, the extension of an existing walkway bridge, and the replacement of new fenders and backing plates on the existing pier. The offshore improvements include the expansion of an existing parking garage, the abandonment of 450-foot tunnel, and minor traffic lane improvements. (See MND, at pp. 2-7 – 2-8.) A Project of such limited scope and duration is appropriately analyzed in an MND, a fact that the Appeals fail to rebut.



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II. Appeal Responses

a. **The MND Sufficiently Analyzed the Project's Potential Impacts with Respect to Air Quality**

i. The Bare, Unsupported Assertions By CARP And WTF That the Project Would Result In Significant Air Quality Impacts Should Be Rejected

The Appeals filed by CARP and WTF contain identical assertions with no citation to evidence or any supporting information alleging that the Project would have significant impacts on Air Quality, and therefore the City should have prepared an EIR. The lack of citation to or provision of substantial evidence alone renders these claims without merit, and for this reason alone they should be denied. (See, e.g., *Parker Shattuck*, 222 Cal.App.4th 768, 778 [Without citation to evidence in the record no fair argument can be made]; *Perley*, 137 Cal.App.3d at 434 [Failure to cite material evidence upon which arguments rely is deemed a waiver of the argument].)

Contrary to these baseless assertions, the MND contains a robust Air Quality analysis supported by an expert technical study. (MND, at p. 4.3-1 – 4.3-12; MND Appx. A.)

This analysis determined that, with the implementation of mitigation measures that would reduce construction impacts to less than significant levels, and consistent with the fact that the Project's specific purpose is to enable the use of a newer, more efficient ship able to fully utilize shore power rather than operating engines at berth, and the creation of overall more efficient operations, the Project would not result in significant environmental impacts as compared to current conditions. (Id.) The MND's analysis and conclusions are well supported by substantial evidence and nothing in the Appeals submitted by CARP and WTF even attempt to suggest otherwise.

ii. The Claims By CFU lack Merit

Appellant CFU makes a series of claims regarding the MND Air Quality analysis that are baseless. CFU's claim that the MND uses a faulty "baseline" appears to misapprehend the applicable standard that applies here. An MND – specifically the Initial Study portion of the MND – is required only to provide a brief description of a project, including its location, and a brief identification of the environmental setting for the project. (CEQA Guidelines § 15063(d).) Here, in addition to describing the Project, the MND's Project description more than adequately describes the environmental setting in existence at the time the MND was prepared under this standard, which meets CEQA's applicable standard for an MND. (MND, pp. 2-1 – 2-12; CEQA Guidelines § 15063(d).) Any claim by an Appellant that the City is obligated by CEQA to set forth and analyze a different set of conditions or circumstances that were in existence in the past or at some other time are simply incorrect. To the contrary, the presently existing conditions described in the MND are the correct standard that should be applied under CEQA. (CEQA Guidelines § 15063(d).)

Furthermore, CFU's claim that, by enabling the ability to berth a larger ship, the Project must invariably result in greater air pollutant emissions fails to apprehend the emissions reductions achieved by the new and improved technology utilized in the newer ships to be berthed at Carnival's Port facility. As explained on pages 4.3-6 and 4.3-7 of the MND and in Table 4.3-4, the newer and more efficient ships the Project would enable the use of would in fact result in reduced air pollutant emissions as compared to current



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conditions. The assertion by CFU that the mere size of a ship dictates its level of pollutant emissions is thus false – as is the claim that the new ship is somehow part of the existing baseline condition, since it is this Project that allows this newer, more efficient, less impactful ship to be used at the Project site. Thus, the use of this new ship is a direct consequence of the Project, not an existing condition.

CFU also complains that any proposed use of tugboats with Tier 3 engines is invalid because there is limited availability of such tugs. However, the MND analysis expressly states that Tier 3 tugs are not expressly mandated due to that very unavailability, instead merely requiring their use only when appropriately sized vessels with Tier 3 engines are available. (MND, at p. 4.3-8, n. 3.) This circumstance is further explained in the Air Quality Technical Report, which explains that mandating the use of Tier 3 tugs for the Project would be problematic as Tier 3 upgrades have mostly only been done for larger boats than those needed for the Project, and mandating the use of those larger Tier 3 boats as compared to smaller non-Tier 3 boats would wipe out any emissions reductions achieved with the larger boats' Tier 3 engines. (See, MND, Appx. A, at pp. 41-42.) Furthermore, under mitigation measure AQ-2, the Project will purchase Emissions Reductions Credits to offset its NOx emissions impacts. (MND, at p. 4.3-9.) The emissions reductions achieved by the Project's design features and mitigation measures thus properly account for the limited availability of Tier 3 engine tugs of a size that is appropriate for the Project, rendering the comment in the CFU Appeal irrelevant. Additionally, to respond to this concern, the MND was amended to state that tug boats would comply with at least Tier 2 standards – which the CFU Appeal fails to address.

CFU also makes the bare assertion that mitigation measures are "lax." CFU does not refer to any specific mitigation measures or explain what this means exactly in terms of CEQA compliance, so the comment should be rejected.

iii. The Claims By CFSE With Respect to Air Quality Lack Merit

The Appeal by CFSE includes a variety of claims with respect to Air Quality that are meritless. The first claim is that, because the Project does not result in zero net emissions of certain criteria pollutants for which the basin is in non-attainment, it will contribute to non-attainment and jeopardize California's eligibility for federal transportation funds. This claim is not valid for several reasons. **First**, the appropriate applicable threshold of significance for criteria pollutant emissions adopted by the City is the one adopted by the region's expert air quality regulatory agency, the South Coast Air Quality Management District ("SCAQMD"), which is not a zero-net emissions standard.² Rather, SCAQMD sets objective air quality emissions thresholds *for individual projects* adopted by the City at levels that are determined by the agency to result in the achievement of air quality standards *in the entire basin*. Thus, relative to construction, the MND correctly determined the Project would not result in significant Air Quality impacts with the implementation of mitigation measures AQ-1 and AQ-2 due to not exceeding these applicable objective thresholds based on the substantial evidence of expert analysis, which makes the adoption of the MND appropriate. (MND Table 4.3-3.) Moreover, with respect to operations, the Project actually would result in a net reduction of criteria pollutant emissions by enabling the use of a newer, more efficient ship that is able to connect to shore power while at berth, and would thus not have to run its engines and emit at those times (enabling the use of the new ship is one of the essential purposes of the Project). (MND

² See, SCAQMD Air Quality Significance Thresholds, at <https://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>



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Table 4.3-4.) Thus, the statement by CFSE that an EIR is required because the Project would result in *some* air quality emissions based on an illusory zero-emission standard is meritless – the MND correctly concludes that the Project would result in less than significant emissions impacts based on public objective thresholds adopted by the City and promulgated by the region’s expert air quality agency, SCAQMD. **Second**, the potential unavailability of federal funding due to the existing non-attainment of air quality standards in the air basin is not a valid CEQA impact. (See, e.g., CEQA Guidelines §§ 15131 [“Economic or social effects of a project shall not be treated as significant effects on the environment”]; 15064 [CEQA does not deal with social or economic impacts].) In any event, as stated, the MND concludes based on substantial evidence that the Project (with mitigation for construction impacts) would not adversely contribute to non-attainment due to resulting in emissions under the applicable thresholds, so the premise of CSFE’s argument is incorrect in asserting that the Project would worsen any existing non-attainment. For that additional reason the argument is incorrect and should be denied.

CFSE’s separate assertion that the SCAQMD threshold is “irrelevant” is severely misguided. As an initial matter, the City’s choice to adopt the published *air quality* impact thresholds of significance promulgated by the expert regional air quality regulatory agency SCAQMD is manifestly appropriate and clearly sanctioned by CEQA. (CEQA Guidelines § 15064 [A lead agency has broad discretion to adopt significance thresholds based on substantial evidence]); *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 931-34 [Lead agency decision to adopt SCAQMD thresholds of significance for cumulative air quality impacts was valid].) However, CFSE gets it wrong here by confusing the issue. The MND’s analysis of *air quality* impacts adopts SCAQMD thresholds but not for Greenhouse Gas (“GHG”) emissions, which is a separate category under CEQA, and for which the MND uses the thresholds under Appendix G of the state CEQA Guidelines. (MND, at pp. 4.8-1 – 4.8-3.) The reference to AB 32 is thus irrelevant. In addition, AB 32 requires statewide GHG emissions reductions planning and the adoption of GHG reducing regulations California Air Resources Board (“CARB”) – it does not demand that all new private development projects have net zero emissions and certainly does not demand that lead agencies adopt for such projects each and every air quality or GHG emissions reducing measure requested by random members of the public. Notably, CFSE points to no provision of AB 32 that mandates any particular requirements for equipment to be used by the Project, nor can it. The claims by CFSE that the use by the City of SCAQMD project-level thresholds for analyzing air quality impacts is inappropriate, or that AB 32 has anything to do with that decision, are simply erroneous.

CFSE also has several complaints about the MND’s Air Quality mitigation measures. As an initial matter, regarding the standards applicable to mitigation measures, an MND must incorporate mitigation measures designed to minimize a Project’s significant environmental impacts – mitigation need not totally eliminate an impact, what matters is that an impact is no longer significant. (CEQA Guidelines § 15070(b); *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 495.) Mitigation measures must also be “feasible,” defined as “means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (CEQA Guidelines §§ 15364; 15126.4.) Additionally, the effectiveness of mitigation measures must be supported by substantial evidence – courts do not weigh conflicting evidence in determining whether mitigation is sufficient to reduce an impact to a less than significant level. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 407.) Finally, a city is not required to accept mitigation measures demanded by third parties, even if those parties are other expert agencies. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233; *Mira Mar Mobile Community*, 119 Cal.App.4th at p. 495.)



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CFSE's first complaint is that Project mitigation measure AQ-1 does not require the use of allegedly available zero-emissions on-and-off road vehicles for construction and terminal operations. CFSE also complains that mitigation measure AQ-1 does not exclusively mandate the use of shore power while berthed or certain ship capture and treatment technology, or the use of Tier 4 engines in tugboats. None of these complaints identify a CEQA violation in the MND.

First, the MND adopts feasible mitigation that are sufficient to reduce construction impacts to a less than significant level, and operational impacts are less than significant, both facts that the CFSE Appeal does not address or dispute. (MND, at pp. 4.3-1 – 4.3-10.) The effectiveness of these mitigation measures is supported by substantial evidence in the MND and the air quality technical analysis, which is sufficient standing alone to uphold them. (Id.; MND, Appx. A.) Beyond that, the City is not required to adopt any additional mitigation measures suggested by members of the public, particularly ones that are not necessary to reduce impacts to a less than significant level. Additionally, with respect to ships connecting to shore power, the new ship the Project will enable to berth will comply with applicable regulatory standards of CARB and the Port of Long Beach ("Port"), and will crucially have the capacity to fully utilize shore power while berthed – this is one of the bases upon which the MND concludes the Project would result in reduced operational air pollutant emissions – so CFSE's apparent assertion that this is not the case is factually inaccurate. (See, e.g., MND, at pp. 4.3-2, 4.8-2; MND Appx. A, at p. 47.) Finally, with respect to the use of zero emissions vehicles, capture technology, and tugboats with Tier 4 engines, the Appeal does not establish with any evidence, much less substantial evidence, that any such equipment is indeed available and cost effective, and thus feasible as mitigation. Indeed, the MND specifically finds that even appropriately-sized tugboats with Tier 3 engines may not be available, so it stands to reason that those with Tier 4 engines would not be sufficiently available either. (MND, at p. 4.3-8, n. 3.) In any event, none of the alleged mitigation measures demanded by CFSE are necessary to reduce Project impacts to a less than significant level, and are therefore not required by CEQA.

With respect to electric dredging equipment, the use of such equipment is mandated by the Project's Mitigation Monitoring Program, mitigation measure AQ-1. (MND, at pp. 4.3-7.) As part of the Project's required mitigation, the Project must comply with it as an enforceable condition of approval. Moreover, Carnival fully anticipates that it will be able to conduct dredging activities – which would only take place over only a 21-day period – utilizing electrical dredging equipment that connects to shore power. (MND, at pp. 4.3-12.) CFSE has not provided any evidence that would even suggest otherwise, other than speculation, which is not substantial evidence under CEQA. (CEQA Guidelines, § 15064.)

CFSE also objects to Air Quality mitigation measure AQ-2, which requires Carnival to purchase Emission Reduction Credits to offset Project nitrous oxide ("NOx") emissions. However, emission offset credits are valid mitigation under CEQA, which allows mitigation that compensates "for the impact by replacing or providing substitute resources." (CEQA Guidelines, § 15370.) Further, the purchase of Emission Reduction Credits is common practice in the state recognized as valid by expert agencies – such credits are allowed and encouraged by state law – CARB even maintains a list of approved Emission Reduction Credits brokers.³ (See, e.g., Health & Safety Code §§ 40709, 40709.5.) Emission Reduction Credits are an allowed and well-recognized means of mitigating project air quality impacts, and CFSE offers no

³ CARB's list of ERC brokers: <http://www.aqmd.gov/docs/default-source/permitting/ercs/ercbrokerslisting.pdf?sfvrsn=52>



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evidence whatsoever to suggest otherwise or that the use of Emissions Reduction Credits would be inappropriate or ineffective here.

Finally, contrary to the statement by CFSE in its Appeal, the MND has been revised to eliminate compliance with the San Pedro Bay Ports Clean Air Action Plan ("CAAP") as part of mitigation measure AQ-1. (See Errata to Final Initial Study/ Mitigated Negative Declaration and Application Summary Report.) Instead, the mitigation measure requires compliance with the Port of Long Beach's Air Quality Best Management Practices for Construction Activities. (Id.) The complaint in CFSE's Appeal regarding CAAP is thus moot.

CFSE's Appeal also states that "emission inventories" are "underestimated." CFSE's Appeal does not specify what inventories it refers to, or how or in what manner the inventories are allegedly underestimated – it just states in conclusory manner that the unspecified inventories are invalid without anything further. In the absence of any clear indication of what they are referring to, citation to the record or provision of any, much less substantial, evidence in support of the claim or that this alleged underestimation leads to a significant unmitigated impact, the claim should be rejected.

b. The MND Sufficiently Analyzed the Project's Potential Impacts with Respect to Biological Resources

The identical CARP and WTF Appeals state, in conclusory fashion, that the Project would result in significant impacts to various biological resources. Neither Appeal provides any information or evidence to support its claims. To the contrary, the conclusion that the Project would result in less than significant impacts to biological resources with the implementation of mitigation measures is supported by substantial evidence in the MND and the Biological Report attached to the MND as Appendix B.

The Appeals fail to address this substantial evidence or provide any substantial evidence of their own to substantiate their claims. On that basis alone the claims should be rejected.

The identical CARP and WTF Appeals state, with no evidence in support, that the Project would cause a significant unmitigated impact on kelp forests. This ignores the MND, which concludes that the Section 404 Permit the Project must obtain from the U.S. Army Corps of Engineers will, if appropriate, include measures geared toward preservation of protected kelp beds in accordance with Clean Water Act, the Rivers and Harbors Act, and applicable regulatory standards. (MND, at p. 4.4-5.) Reliance on such regulatory programs and compliance is a perfectly appropriate means of avoiding a significant impact under CEQA. (See, e.g., *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933-34 [Compliance with building code sufficient to reduce impacts to less than significant valid under CEQA]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal. App. 4th 884, 906 ["Furthermore, a condition requiring compliance with regulations is a common and reasonable mitigation measure"].) The Appeals fail to establish how compliance with the mandatory requirement to obtain a Section 404 permit is not an adequate means of ensuring less than significant Project impacts on kelp forests.

The identical CARP and WTF Appeals also have a vague reference to alleged Project impacts on "marine mammals", while the CFSE Appeal specifically mentions "whale strikes." No evidence in support of these broad claims is provided, and the claims misapprehend the scope of the Project and ignore Project mitigation measures that are supported by substantial evidence and applicable regulatory compliance measures. First, the Project analyzes potential impacts on marine mammals on page 4.4-4 of the MND. Therein, it states that the Project would comply with mitigation measures, including BIO-2, which requires



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a qualified biological monitor to be on site during all dredging and underwater activities with the authority to stop work on the Project should any marine mammals come close enough to Project construction activities that they could be impacted. (MND, at p. 4.4-4.) In addition, the Project is required to obtain an Incidental Harassment Authorization (“IHA”) from the National Oceanic and Atmospheric Administration (“NOAA”) Office of Protected Resources under Marine Mammal Protection Act, which further support the conclusion that the Project would not result in significant impacts to marine mammals, including but not limited to whales. (MND, at pp. 2-12 and 4.4-4.)

It also bears mentioning that the Project does not mandate or entail any change in the total number of ship trips coming into the Project site – it merely provides upgrades to the Carnival berth at the Port and surrounding infrastructure to increase efficiency, reduce environmental impacts and enable the use of a newer, more efficient, less environmentally impactful ship. (MND, at p. 4.3-6.) Thus, any claim that the Project would result in any operational increase of interactions between ships and marine life is incorrect.

The identical CARP and WTF Appeals also have a vague reference to alleged Project impacts on “fish habitat” and “birds.” These claims are similarly provided without any indication of what fish habitat and birds are being referred to, how the Project would allegedly impact such fish habitat and birds, or an explanation of how such impacts are potentially significant supported by any evidence, much less substantial evidence. The Appeals also do not address the substantial evidence in the MND in support of the conclusion that the Project would result in less than significant impacts on fish and birds provided on pages 4.4-2 through 4.4-4 of the MND, nor does it address mitigation measure BIO-3, which calls for a bird survey and biological monitor to limit loss of bird habitat and potential impacts to birds (MND, at pp. 4.4-4 and 4.4-5.) CARP and WTF’s total failure to identify any evidence in support of their claims or any indication of any deficiency in the MND warrants denial of their Appeals.

c. The MND Sufficiently Analyzed the Project’s Potential Impacts with Respect to Energy

CFSE makes the claim that the MND is invalid because it does not include mitigation measures with respect to energy, provide solar energy, or mandate the use of alternative fuels or energy storage. All of these claims are baseless. Regarding energy, the MND analyzes the Project’s potential impacts on pages 4.6-1 to 4.6-3, concluding based on substantial evidence that the Project would not result in significant impacts on energy resources during construction, and would in fact substantially reduce energy consumption operationally due to the fact that the Project would enable the use of a more energy-efficient new ship. (MND, p. 4.6-1 and Table 4.6-1.) Mitigation measures are only required under CEQA where necessary to address significant impacts. (CEQA Guidelines § 15070(b).) Since the Project would not result in significant impacts, no mitigation is required. The Appeal provides no information or evidence that would undermine this conclusion, and for that reason it should be rejected. The demand by CFSE that the Project use photovoltaic panels, alternative fuels, or battery energy storage not called for by the Project are not based on any legal requirement and are not needed to reduce any significant impacts, and are therefore not required of the Project.

d. The MND Sufficiently Analyzed the Project’s Potential Impacts with Respect to Noise

The identical CARP and WTF Appeals also claim without citation to evidence or any valid basis that the Project would result in significant unmitigated noise impacts. In addition to not specifying what would be the source of those alleged impacts, or providing any evidence that would support a conclusion that such impacts would be significant, the Appeals do not address the robust noise analysis in the MND that is



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supported by a Noise Technical study. (MND, at pp. 4.13-1 through 4.13-10; Appx. F.) Thus, the Appellants fail to carry their burden to establish the Project would result in significant unmitigated noise impacts that would necessitate an EIR.

e. The MND Sufficiently Analyzed the Project's Potential Impacts with Respect to Hazardous Materials

CFU asserts in its Appeal that the MND is invalid because it states that the Project says metal contaminant levels in sediment are "okay for disposal," but allegedly that unspecified lower contaminant levels from "2009" "were deemed too high for ocean dumping." The Appeal provides no reference to this alleged 2009 document, nor does it make any attempt to explain the context in which this alleged 2009 determination occurred, nor the regulatory standards it relied on. The Appeal also does not provide any information to demonstrate any invalidity in the conclusion of the MND that the metals measured in materials that would be dredged do not have accumulations of metal in exceedance of applicable regulatory standards. (MND, at p. 4.9-2.) The CFU Appeal also ignores the fact that, as reflected in the MND, the Project will comply with extensive regulatory requirements that will address potential discharges of hazardous materials as a result of dredging activities, including obtaining a Waste Discharge Requirements (NPDES) approval from the Los Angeles Regional Water Quality Control Board and Clean Water Act Section 404 and Section 10 permits from the U.S. Army Corps of Engineers. (MND, at p. 2-12.) In the absence of any reference to facts, authority or evidence in the record to demonstrate that the Project would in fact result significant unmitigated impacts with respect to any discharge metals contrary to the conclusion of the MND, the Appeal by CFU must fail.

CFSE claims in its Appeal in conclusory fashion that the Project would expose sensitive receptors to hazardous materials not identified in the MND. CFSE does not specify how the Project would do so, what hazardous materials would be involved, what and where these alleged sensitive receptors are located, or what the alleged exposure pathway would be. It bears noting that this Project is located in an industrial Port a great distance away from any schools, residences, or hospitals typically considered to be locations where sensitive receptors would be located, a fact mentioned on page 4.13-3 of the MND. Again, baseless assertions rooted in speculation and the absence of clear facts are not substantial evidence under CEQA and do not demonstrate any invalidity in the MND.

f. Consultation with Port of Long Beach

The CCA Appeal asserts a lack of consultation between the City and the Port of Long Beach. We understand there was extensive cooperation between the Port and the City with respect to this Project, indeed the Port fully carried out its duties as a responsible agency under CEQA, and any claim otherwise is based only on false speculation. The claim that the Port was not involved with this Project is simply false.

g. The CFSE Appeal Fails to Establish Any Invalidity In The MND Related To Seismic Activity

CFSE claims in its Appeal that the MND is invalid because the Project was not built to a "minimum 7.0 earthquake standard." Though it is not clear, the Appeal also refers to the "MOTEMS requirements" in the same bullet point, which we can only assume is the source of the alleged "minimum 7.0 earthquake standard." The MOTEMS requirements are the state's "Marine Oil Terminal Engineering and Maintenance Standards." These standards, promulgated under California Building Code Chapter 31F, apply by their own clear terms to marine oil facilities. The facility being improved here is a berth for cruise ships. MOTEMS requirements thus do not apply to the Project. Thus, the Appeal fails to establish any invalidity



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in the geotechnical analysis in the MND for the Project, which concludes based on substantial evidence that the Project would result in less than significant impacts as a result of seismic ground shaking due to compliance with *applicable* building code and engineering standards and requirements and Project design elements to would be incorporated to ensure Project impacts are less than significant. (MND, at pp. 4.7-1 – 4.7-3; Appx. D.) CFSE's Appeal also asserts that the "Wilmington Blind Thrust Fault" is located under the Port. The MND and Geotechnical Report attached to the MND as Appendix D do not identify this fault, and neither does the USGS Quaternary Faults interactive map.⁴ The MND does identify the nearby faults that are identified by the USGS, concluding that while the Project site is subject to strong seismic ground shaking (as are virtually all Projects in California), the Project site is not located in an Alquist-Priolo Earthquake fault zone, and such potential impacts would be reduced to a less than significant level with mandatory compliance with the California Building Code. (MND, at p. 4.7-1 – 4.7-2.) Accordingly, the Appeal fails to carry its burden establish that any significant unmitigated impacts with respect to seismic activity would result from the Project contrary to the conclusions of the MND. For this additional reason, CFSE's Appeal should be denied.

h. Piecemealing

CFSE also claims in its Appeal the Project's analysis has been "piecemealed" in violation of CEQA into "separate City of Long Beach and Port of Long Beach projects." The Appeal does not identify what these alleged separate projects are, so it is not possible to assess the validity of the claim. However, generally, CEQA defines "project" broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..." (CEQA Guidelines § 15378(a).) Piecemealing occurs when a project is broken up into smaller pieces to avoid environmental review of all the impacts of the entire, true project. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1214.) In the absence of any identification of the allegedly entire, "true" Project here that has allegedly been piecemealed, it is not possible to assess the validity of claim. Consequently, CFSE has failed to carry its burden to establish any violation of CEQA. Contrary to this baseless claim, the Project proposed and analyzed in the MND is the entire true project proposed here.

III. Conclusion

On the whole, the Appeals assert in conclusory fashion a wide variety of alleged significant impacts with no provision of, or citations to, any evidentiary support, much less the kind of substantial evidence in the record that would be required to demonstrate any valid deficiency with the MND. At the same time, the Appeals totally ignore the substantial evidence supporting the conclusions of the MND that the Project would not result in significant unmitigated impacts. The Appeals therefore lack merit and should be denied.

⁴See <https://usgs.maps.arcgis.com/apps/webappviewer/index.html?id=5a6038b3a1684561a9b0aadf88412fcf>



November 21, 2019
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Best regards,

Andrew Brady / cw

Andrew Brady
Marshall M. Taylor

MMT:

cc. Michael Mais, Esq. (michael.mais@longbeach.gov)

M E M O R A N D U M

To: Amy Harbin, AICP, City of Long Beach

From: Alan Ashimine, Michael Baker International
Frances Yau, Michael Baker International
William Walters, Aspen Environmental Group

Date: November 25, 2019

Subject: Topical Responses to Appeals on the Long Beach Cruise Terminal Improvement Project

On November 7, 2019, the City of Long Beach (City) Planning Commission adopted Mitigated Negative Declaration (MND 08-19) and approved a Site Plan Review (SPR18-032) for the onshore improvements to the Long Beach Cruise Terminal, including expansion of the existing parking structure to include approximately 650 parking stalls, the reconfiguration of the leasehold traffic lanes near the parking garage, and abandonment and fill of the existing tunnel system located at 231 Windsor Way in the Planned Development 21 Zoning District (District 2).

Based on *Long Beach Municipal Code* Section 21.21.502, appeals must be filed within ten days after a decision is made for which a public hearing was required. The following five appeals were received by the City for the proposed project. With the intent of conducting a comprehensive and meaningful evaluation, the City has elected to prepare the following topical responses to the appeals.

Commenter	Date	Summary of Appeal
Coalition for Clean Air (CCA) <i>Jerilyn Lopez Mendoza</i>	November 13, 2019	The appellant states that the Planning Commission approved the MND without input from or consultation with the Long Beach Harbor Department (Port of Long Beach; POLB) on the maritime issues. Thus, the appellant claims the decision was made without sufficient information to contemplate the project's full environmental impacts and requests preparation of an Environmental Impact Report (EIR).
Citizens About Responsible Planning (CARP) <i>Ann Cantrell, Joe Weinstein, Corliss Lee</i>	November 14, 2019	The appellant requests an EIR be prepared to fully analyze impacts related to air quality, kelp forests, marine mammals, birds, fish habitat, noise, light, toxic materials, disposal of dredge materials, and general adverse impacts associated with cruise ships.
Sierra Club Los Cerritos Wetlands Task Force <i>Ann Cantrell, Anna Christensen</i>	November 14, 2019	The appellant requests an EIR be prepared to fully analyze impacts related to air quality, kelp forests, marine mammals, birds, fish habitat, noise, light, toxic materials, disposal of dredge materials, and general adverse impacts associated with cruise ships.
Concerned Faculty of USC and UCLA	November 15, 2019	The appellant claims several faults associated with the MND analysis, including inaccurate baseline assumptions and lax

<p><i>Andrew Hricko, Professor Emerita, USC Keck School of Medicine</i></p>		<p>mitigation measures (e.g., Tier 3 tugboat availability) associated with the air quality analysis. The appellant also raises concerns regarding the proposed disposal of dredge materials with potential hazardous contaminants into the ocean. Preparation of an EIR is requested.</p>
<p>Coalition for a Safe Environment (CFASE) <i>Jesse N. Marquez</i></p>	<p>November 15, 2019</p>	<p>The appellant states that the City violated CEQA due to the segmenting and piecemealing of the project into two separate City of Long Beach and POLB projects. The appellant also requests more stringent air quality mitigation measures that require the use of zero emissions on- and off-road vehicles, cargo handling equipment, and equipment and ship emissions capture and treatment technologies; Tier 4 tugboats; electric shore power; electric dredging equipment; and renewable energy sources. The appellant rejects the use of the South Coast Air Quality Management District's (SCAQMD) greenhouse gas (GHG) emissions significance threshold and raises additional concerns related to hazardous materials exposure and earthquake hazards. The appellant also requests information on how the proposed mitigation measures will be enforced by the City. Preparation of an EIR is requested.</p>

City of Long Beach/POLB Responsibilities

According to CEQA Guidelines Section 15050(a), where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or Negative Declaration for the project. In the case of the proposed project, the City and POLB agreed for the City to be the Lead Agency and for the POLB to be a Responsible Agency. Pursuant to CEQA Guidelines Section 15050(b), Responsible Agencies shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each Responsible Agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the project. Thus, the POLB, as a Responsible Agency, is required to review the proposed project and the *Long Beach Cruise Terminal Improvement Project Recirculated Initial Study/Mitigated Negative Declaration* (Recirculated IS/MND), prepared by Michael Baker International and dated August 2019, prior to approval of the requested Harbor Development Permit and New Water Lease Agreement. It should be noted that the City and POLB have been concurrently reviewing the project's CEQA documentation to ensure adequate analysis of the proposed actions as a whole. Further, additional conditions not detailed in the CEQA document are required as part of the Water Lease Agreement between the POLB and Carnival, including requiring shore power and participation in the POLB's vessel speed reduction program.

Biological Resources

Appellants raised concerns related to project impacts on biological resources, including kelp forests, marine mammals, birds, and fish habitat. The *Long Beach Cruise Terminal Improvement Project Biological Resources Report* (Biological Report), prepared by GHD and dated April 30, 2019 analyzes project impacts to biological resources; refer to Recirculated IS/MND Appendix B, *Biological Report*. Mitigation measures are included in the Recirculated IS/MND to reduce potential impacts to marine mammals and nesting birds.

It should also be noted that the required Section 404 permit under the Federal Clean Water Act (CWA) and Section 10 permit under the Rivers and Harbors Act from the U.S. Army Corps of Engineers (Corps) may require pre-construction surveys to determine presence/absence of kelp

beds in the project vicinity, and if determined present, potential impacts would be minimized via compensatory mitigation to be determined in consultation with the Corps under the Section 404 and 10 permit processes. Therefore, compliance with applicable regulatory requirements in accordance with the required CWA permits would ensure potential project impacts to help forests are reduced to less than significant levels.

Air Quality

Baseline Assumption

The rationale for utilizing existing conditions as baseline, pursuant to CEQA case law, is provided on page 35 of Recirculated IS/MND Appendix A, *Air Quality/Greenhouse Gas Study*. Using a future baseline would be speculative based on assumptions of which vessel Carnival Cruise (Carnival) would use for its seven-day cruises. Carnival could use the *Carnival Splendor* with a shore power retrofit, or it could use any other cruise ship owned or bought by Carnival in the future. More importantly, the proposed project is only being evaluated under CEQA due to the fact that berth depth and other cruise terminal improvements, requiring discretionary approvals, are necessary to allow the *Carnival Panorama* to call at the terminal. Carnival has no specific vessel size, efficiency, engine tier, etc. limitations for the Long Beach cruise terminal and can technically use any vessel at any time that can physically use the cruise terminal berth. Therefore, future baseline ships, while needing to have shore power capabilities, could also be old and less efficient ships, have Tier 0 engines, etc. As such, a comparison analysis between an unknown future baseline ship and the proposed *Carnival Panorama* would be speculative.

Regardless, assuming a scenario in which the *Carnival Splendor* was retrofitted for shore power and designated as the future baseline for “existing conditions,” the emissions associated with the *Carnival Splendor*, an older and less efficient vessel, would still be higher than those associated with the *Carnival Panorama*. The daily emissions comparison resulting from the *Carnival Splendor* and *Carnival Panorama*, both with shore power, are detailed below in Table 1, *Carnival Panorama and Carnival Splendor Daily Emissions Comparison*.

**Table 1
Carnival Panorama and Carnival Splendor Daily Emissions Comparison**

		Emissions ¹ (pounds per day)					
		PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
<i>Carnival Panorama</i> (w/shore power)	At Berth	13.15	12.13	530.87	20.22	55.61	25.28
	Transit (in SCAB)	79.51	73.40	3,211.14	122.33	336.41	152.91
	Traffic Increase	8.96	2.75	12.92	0.21	66.79	8.43
	Terminal Increase	1.1	1.02	17.36	0.02	12.08	1.82
	Total	102.72	89.30	3,772.29	142.78	470.89	188.44
<i>Carnival Splendor</i> (w/shore power)	At Berth	13.17	12.16	617.97	20.26	55.72	25.33
	Transit (in SCAB)	104.37	96.34	4,897.44	160.57	441.57	200.71
	Total	117.54	108.50	5,515.42	180.83	497.29	226.04
Total Daily Emissions Decrease		(14.82)	(19.20)	(1,743.13)	(38.05)	(26.40)	(37.60)
Notes: SCAB = South Coast Air Basin; PM ₁₀ = coarse particulate matter; PM _{2.5} = fine particulate matter; NO _x = nitrous oxides; SO _x = sulfur oxides; CO = carbon monoxide; VOC = volatile organic compounds							

¹ While GHG emissions are not presented in Table 1, GHG emissions increase or decrease tracks with SO_x emissions since both are primarily related to fuel composition, SO_x being related to fuel sulfur composition and GHG emissions primarily related to fuel carbon composition. Therefore, since there would be a reduction in SO_x emissions for the *Carnival Panorama* compared to the *Carnival Splendor*, there would similarly be a reduction in GHG emissions.

Due to its higher efficiencies and higher tier rated engines (Tier 2 versus Tier 1), the *Carnival Panorama* would result in fewer daily emissions compared to a shore power retrofitted *Carnival Splendor*. Therefore, regardless of the baseline assumptions, the new more efficient and higher engine tier *Carnival Panorama* would result in emissions reductions.

Shore Power Requirement

As a requirement under Carnival's water lease with the POLB, Carnival would be required to use shore power for all ship calls at the Long Beach cruise terminal. Additionally, compliance with the California Air Resources Board (CARB) shore power regulations would similarly require all ships to use shore power. Therefore, a separate City of Long Beach mitigation measure in the Recirculated IS/MND requiring shore power is unnecessary.

Mitigation Measure AQ-1

Mitigation Measure AQ-1 was revised to the following in response to comments received on the Recirculated IS/MND and is reflected in the project's Mitigation Monitoring and Reporting Program.

AQ-1 Prior to issuance of a Demolition or Grading Permit, the City Engineer shall confirm that the following Best Management Practices (BMPs) are included in the Grading Plan and specifications to reduce construction emissions in accordance with the Port of Long Beach's Air Quality Best Management Practices for Construction Activities ~~compliance with the San Pedro Bay Ports Clean Air Action Plan (CAAP):~~

- Off-road Engine Tier: Construction terrestrial off-road equipment shall be required to meet final Tier 4 emissions standards.
- Electric Dredges: Dredging equipment shall be powered electrically by a shore power connection.
- Construction Tug Boat Engine Tier: If appropriately sized and available, tug boats with Tier 3 or higher engines shall be used during construction. At a minimum, all tug boat engines shall meet Tier 2 emissions standards.

An appellant claims that the City and Carnival stated that electric dredging equipment may not be available. This is incorrect; electric dredging has been utilized on POLB projects since 2011 and at least three San Pedro Bay Ports-based electric dredges are available, including the clamshell dredge derrick barge Valhalla, clamshell dredge derrick barge Vulcan, and hydraulic cutter suction dredge HR Morris. As such, Mitigation Measure AQ-1 requires the use of electric dredges.

Additionally, an appellant requests Tier 4 tug boats be required as part of Mitigation Measure AQ-1. However, the City and POLB are unaware of any tug boats with Tier 4 engines that are operating in, or nearby, the San Pedro Bay Ports. The two known Tier 4 tug boats currently working on the West Coast are the following larger vessel assist tug boats:

- Caden Foss – main engines rated at 6,772 horsepower (hp) working in dedicated service at the Chevron Long Wharf in Richmond, CA; and
- Earl W. Redd – main engines rated at 5,364 hp working in the Seattle/Puget Sound area.

As these two vessel assist tug boats have on-going duties, they would not be available for the proposed project. The lack of availability of smaller tug boats with high engine tiers (e.g., Tiers 3 or 4) is likely due to the fact that they are not used as often as larger vessel assist tug boats. Additionally, the emissions reduction potential for an engine retrofit of a smaller tug boat is much less than an engine retrofit of a larger vessel assist tug boat. The appellant does not provide any additional information or substantiation that Tier 4 tug boats, or a reasonable number of small Tier 3 tug boats, are currently available for the proposed short-term dredging activities.

Mitigation Measure AQ-2

Mitigation Measure AQ-2 requires Carnival to purchase or lease unencumbered Emission Reduction Credits sufficient to reduce the project's construction-related nitrous oxide (NO_x) emissions to below the SCAQMD's threshold of 100 pounds per day for the duration of proposed dredging activities. The purchase of Emissions Reduction Credits is an allowed mitigation pursuant to the SCAQMD and CARB.

An appellant requests requiring Carnival to utilize the following vehicles, equipment, and technologies during construction and operational activities to reduce emissions to the maximum extent possible:

- *Zero emissions on- and off-road vehicles*: With a lack of existing regulations requiring the development of zero emissions off-road vehicles, these vehicles are not currently readily available in large numbers, and some equipment types and sizes do not have zero emissions models available. Additionally, Carnival contracts with a number of third-party providers for on-road vehicles (e.g., deliveries, buses, and shuttles). Therefore, outside of a two-party contract between Carnival and each of its contracted providers, Carnival does not have control of whether these vehicles have zero emissions technology.
- *Zero emissions cargo handling equipment (CHE)*: There are no existing regulations that require zero emissions CHE. Carnival would continue to utilize existing CHE at the cruise terminal to load/unload cargo associated with each of its vessels, including the *Carnival Panorama*. On-site emissions associated with a few added CHEs, if needed, would not substantially increase on-site emissions.
- *Equipment and ship emissions capture and treatment technologies*: This type of technology is used for hoteling vessels at berth that are not able to hook up to shore power. Requiring this technology is unnecessary given that Carnival ships, including the *Carnival Panorama*, will be required to hook up to shore power pursuant to CARB regulations.

It should be noted that Carnival is instituting a program with its dockside service providers to convert service vehicles to electric power. Carnival is also looking at off-site parking locations with shuttle service for its employees; however, parking lots for long-term use near the POLB are difficult to find. Additionally, Carnival is evaluating the installation of solar power and other renewable sources to provide power for terminal operations.

Note, operational air quality impacts associated with the project was determined to be less than significant. Therefore, no mitigation is required for operational activities.

Greenhouse Gas Emissions Threshold

An appellant claims that the Recirculated Draft IS/MND's use of SCAQMD's GHG threshold to evaluate project impacts related to GHG emissions is irrelevant and requests requiring the use of

zero emissions vehicles, CHE, and equipment and ship emissions capture and treatment technologies. The use of an emissions threshold is not irrelevant for CEQA. State agencies have developed a number of methodologies in evaluating GHG impacts utilizing quantifiable significance thresholds. Therefore, it is generally accepted in the industry to utilize an emissions threshold to determine a project's significance in this regard. As analyzed in Recirculated Draft IS/MND Section 4.8, *Greenhouse Gases*, the project would result in a net decrease of 3,730 metric tons of carbon dioxide equivalent per year (MTCO₂eq/yr) compared to existing conditions and would not exceed the SCAQMD's 10,000 MTCO₂eq/yr threshold.

Refer to the 'Mitigation Measure AQ-2' discussion above regarding the use of zero emissions vehicles, CHE, and equipment and ship emissions capture and treatment technologies.

Energy Use

An appellant claims the CEQA document fails to provide mitigation measures related to energy use and does not require solar energy or other renewable energy sources to support the project's energy needs. As detailed in Recirculated Draft IS/MND Section 4.6, *Energy*, construction and operational energy consumption associated with the project would be less than significant. Compared to existing conditions, the *Carnival Panorama* and expanded parking structure (compliant with the new 2019 Building Energy Efficiency Standards) would result in reduced energy consumption; refer to Recirculated Draft IS/MND Table 4.6-1, *Energy Consumption*. CEQA only requires mitigation measures be implemented if potentially significant impacts result. Given that energy impacts would be less than significant, no mitigation was required. However, as stated above, Carnival is instituting a program with its shore side vendors to convert service vehicles to electric power and is also evaluating the potential for solar power installation or other renewable energy sources to provide power for terminal operations.

Hazards/Ocean Disposal of Dredge Materials

Comments were raised regarding potential hazards associated with the proposed disposal of dredged materials at the LA-2 Ocean Dredge Material Disposal Site (ODMDS). A soil sampling analysis was conducted as part of the *Sampling and Analysis Plan Report, Long Beach Cruise Terminal Dredging Environmental Investigation Project* (Dredging Soils Report), prepared by Kinnetic Laboratories and dated February 2019; refer to Recirculated IS/MND Appendix E, *Phase I ESA/Dredging Soils Report*. Based on the Dredging Soils Report findings, the U.S. Environmental Protection Agency (EPA) and Corps' Southern California Dredge Material Management Team concurred that the dredged sediment would be suitable for placement at the LA-2 ODMDS. Carnival will be required to adhere to the EPA's mandatory disposal site use conditions attached to the LA-2 disposal permit. Further, the California Coastal Commission, in a letter dated November 5, 2019, supports the EPA and Corp's findings and states that the proposed disposal of dredge materials at the LA-2 ODMDS would not adversely affect coastal resources.²

Additionally, appellants raised concerns related to hazardous materials impacting sensitive receptors (e.g., schools, residences, hospitals, and senior facilities) in the project vicinity. The project site is located in an industrial area within the POLB and there are no sensitive receptors nearby. Therefore, no impacts would occur in this regard.

² California Coastal Commission, No-Effects Determination NE-0006-19 (Disposal at LA-2 of sediment dredged from Carnival Cruise Lines Terminal, Port of Long Beach, Los Angeles County), November 5, 2019.

Mitigation Monitoring

A comment was raised regarding what sanctions and actions would be taken if Carnival did not implement the required mitigation measures. CEQA requires that a mitigation reporting or monitoring plan be adopted for environmental documents that include mitigation measures. The reporting or monitoring plan is designed to ensure compliance during project implementation and identifies the monitoring process, milestones, and responsible parties for each measure.

Miscellaneous

Other general issues raised by the appellants include those related to light, seismic hazards, and noise. Project impacts related to light, seismic hazards, water quality, and noise are analyzed in Recirculated IS/MND Sections 4.1, *Aesthetics*, 4.7, *Geology and Soils*, 4.10, *Hydrology and Water Quality*, and 4.13, *Noise*. As detailed, project impacts associated with these topical areas would be reduced to less than significant levels upon implementation of existing regulations and Mitigation Measure NOI-1.